

Message

From: John Meyer [JMeyer@midasgoldcorp.com]
Sent: 5/21/2019 2:08:53 PM
To: Cerise, Kathy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3ccf3f66d09943fe914be271fc992084-Hernandez, Kathryn]
CC: L. Michael Bogert [mbogert@midasgoldinc.com]; Austin Zinsser [zinsser@midasgoldinc.com]; Chris Dail [Dail@midasgoldinc.com]
Subject: RE: Stibnite data

Great Kathy.

We will continue to assess what else may be useful for you.

John

From: Cerise, Kathy <Cerise.Kathryn@epa.gov>
Sent: Tuesday, May 21, 2019 8:07 AM
To: John Meyer <JMeyer@midasgoldcorp.com>
Cc: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Subject: RE: Stibnite data

The report are on you share file this morning!

Thanks

Kathy

Kathryn Cerise
Region 10 Remedial Project Manager
1200 6th Ave,
Seattle, WA 98101
Mail Code: 12 D12 1
Phone: 206-553-2589

From: John Meyer <JMeyer@midasgoldcorp.com>
Sent: Monday, May 20, 2019 6:21 PM
To: Cerise, Kathy <Cerise.Kathryn@epa.gov>
Cc: Chris Dail <Dail@midasgoldinc.com>; Merissa A. Moeller <mmoeller@martenlaw.com>; L. Michael Bogert <mbogert@midasgoldinc.com>
Subject: Re: Stibnite data

Kathy,

The reports should be uploaded shortly.

I will follow up with our team tomorrow morning to determine if there are any other historical reports that we have, that may contain useful ground or surface water data.

Regards,

John

From: "Cerise, Kathy" <Cerise.Kathryn@epa.gov>
Date: Monday, May 20, 2019 at 6:10 PM
To: John Meyer <JMeyer@midasgoldcorp.com>
Subject: RE: Stibnite data

John

Elizabeth did not have the reports as of today when I spoke with her. Yes I would appreciate the 1996-98 Woodward assessment! Does the Phase I and II contain the historical GW monitoring etc?

Thanks

Kathy

Kathryn Cerise
Region 10 Remedial Project Manager
1200 6th Ave,
Seattle, WA 98101
Mail Code: 12 D12 1
Phone: 206-553-2589

From: John Meyer <JMeyer@midasgoldcorp.com>
Sent: Monday, May 20, 2019 4:56 PM
To: Cerise, Kathy <Cerise.Kathryn@epa.gov>
Cc: L. Michael Bogert <mbogert@midasgoldinc.com>; Chris Dail <Dail@midasgoldinc.com>; Merissa A. Moeller <mmoeller@martenlaw.com>
Subject: Stibnite data

Kathy,

It's my understanding that the Phase I and Phase II documents were sent to EPA (Elizabeth McKenna) last week through Merissa Moeller at Marten Law. Can you confirm that you received the reports?

We also have the 1996-1999 Woodward-Clyde site assessment in electronic format, and can send you that report (via the Marten Law site) if you do not have a copy and would like one.

Regards,
John

From: Cerise, Kathy <Cerise.Kathryn@epa.gov>
Sent: Monday, May 20, 2019 2:30 PM
To: John Meyer <JMeyer@midasgoldcorp.com>
Subject: Stibnite data
Importance: High

Good Afternoon John

After speaking with our Site attorney, her understanding from Michael was that Midas had collected and assessed the historic Site data (groundwater, surface water, seeps, sediment, benthic and fish tissue) in order to complete your Phase I and Phase II. Please provide me with the data you utilized and provide the summary reports from USFS, IDEQ etc. You can just post them on the website I was provided if they are too big to email.

Thank you for your help,

Kathy

Kathryn Cerise
Region 10 Remedial Project Manager
1200 6th Ave,
Seattle, WA 98101
Mail Code: 12 D12 1

Phone: 206-553-2589

Message

From: McKenna, Elizabeth [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=859179A8CB0547BC974DC0241E973D37-MCKENNA, ELIZABETH]
Sent: 5/14/2019 2:01:57 AM
To: Bradley M. Marten [bmarten@martenlaw.com]
CC: Merissa A. Moeller [mmoeller@martenlaw.com]; Cerise, Kathy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3ccf3f66d09943fe914be271fc992084-Hernandez, Kathryn]
Subject: RE: Stibnite Mine

Hi Brad. I have reserved a room for our meeting on Friday beginning at 9. You will need to check in at the service center and they will call me to meet you downstairs. The conference call number that I have reserved is: Personal Privacy / Ex. 6 (code: Personal Privacy / Ex. 6). I will invite Lisa O'Hara this evening and will ask her to forward the invitation along to IDEQ staff that should be invited.

We would appreciate it if Midas could bring to the meeting the following:

- 1) a large (preferably poster size) print of Figure ES-18 in the September 2016 Executive Summary of the Plan of Restoration and Operation.
- 2) a map of all groundwater monitoring wells highlighting the subset of wells sampled. The map should be oriented the same way as Figure ES-18.
- 3) a map of all locations of surface water monitoring wells and locations where surface water samples have been taken. The map should be oriented the same way as Figure ES-18.
- 4) a map showing the locations of all soil background samples. Please provide the corresponding concentrations. The map should be oriented the same way as Figure ES-18.

I have invited Lynne Hood, EPA's NEPA project manager, to join us by phone. If you send me a list of the participants on Midas' team, I can send a calendar invite to all meeting participants.

Midas' agenda seems good to us, so I'm not sure we need to talk on Wednesday. If you think a discussion is needed, we will set aside time to talk. Kathy has reviewed Midas' SOW as well as other background material. We are likely to have suggestions regarding the work proposed by Midas, but it will be good to get an understanding of Midas' rationale for selecting locations for the investigation and the method of investigation chosen. We look forward to the discussion.

Regards,

Elizabeth

Elizabeth McKenna
Assistant Regional Counsel
U.S. EPA
1200 Sixth Avenue
Seattle, WA 98101
(206) 553-0016
Cell: (206) 402-9963

From: Bradley M. Marten <bmarten@martenlaw.com>
Sent: Monday, May 13, 2019 3:47 PM
To: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Cc: Merissa A. Moeller <mmoeller@martenlaw.com>
Subject: Stibnite Mine

Elizabeth:

This will confirm our meeting with you and Kathy Cerise on Friday at EPA starting at 9 am. We have set aside three hours to meet, although I expect we can be through our agenda in 2 hours or less. John Meyer will make Midas's presentation. Merissa Moeller and I will join you and Kathy. Please let me know if you plan for others to attend.

In order to keep everyone on the same page moving forward, we agreed in our call last Friday to set up a conference line and invite IDEQ to join in the call. Midas would also like to have its technical staff in Boise join by phone. Please confirm that you can make a conference line available and provide a call in number and time.

I understand from your May 9 e-mail (below) that you will send me a list of data needs/questions from Kathy tomorrow (Tuesday). I'll circulate those and suggest we set up a call on Wednesday with you, Kathy, me and John to firm up the agenda and our mutual expectations for the Friday meeting. John will be prepared with 15-20 slides addressing 1) the history of the Stibnite mine and restoration work to date; 2) the Plan of Restoration and Operations for a modern mine; and 3) the scope of work for a limited investigation of arsenic discharges from former operations identified during recent groundwater sampling. Our goal will be to develop a schedule for negotiating and implementing an Agreed Order with EPA and IDEQ this summer to allow sampling to proceed this work season.

Please let me know if you and Kathy can set aside 30 minutes to speak with John and me on Wednesday. Thanks

Bradley M. Marten
Partner

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T - 206 . 292 . 2600
E - bmarten@martenlaw.com
martenlaw.com
1191 Second Ave, Suite 2200
Seattle, WA 98101



From: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Sent: Thursday, May 9, 2019 4:18 PM
To: Bradley M. Marten <bmarten@martenlaw.com>; Merissa A. Moeller <mmoeller@martenlaw.com>
Subject: Stibnite Mine

Hi Brad and Merissa. Kathy Cerise can make herself available on Wednesday and Friday (with a preference for a meeting after 12). I am free before 12:00 and after 1:30 on Wednesday and can be available any time on Friday, with a preference for a meeting after 1:30 on Friday. On Tuesday I will send you a list of the data/information that Kathy would like to obtain from Midas in order to evaluate the proposal.

- Elizabeth

Elizabeth McKenna
Assistant Regional Counsel
U.S. EPA
1200 Sixth Avenue
Seattle, WA 98101
(206) 553-0016
Cell: (206) 402-9963

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Appointment

From: Bailey-Morton, Ethel [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=9B33DD651FA04119BE02B7B6B151FF91-BAILEY, ETHEL]
Sent: 4/18/2019 2:24:48 PM
To: Cook, Steven [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=394f5dede6184bc083cf9390e49a192c-Cook, Steve]; Woolford, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9a70358e7660435cbe6afa87b7b9b71b-Woolford, James]; Mackey, Cyndy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b2f2b414786040ee8d75a21fa1c04a9b-Mackey, Cyndy]; Starfield, Lawrence [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8a89d6cd217d4254a5879abecb3f314e-Starfield, Lawrence]; Wright, Peter [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=11616a3db06f4eceb13ea26c7e6dc1f0-Wright, Pet]; Isayer@midasgoldinc.com; mbogert@midasgoldinc.com; JCruden@bdlaw.com

Subject: HOLD - Meeting with Midas Gold Corp. Idaho, Call-in Number: Personal Privacy / Ex. 6 Code: Personal Privacy / Ex. 6
Location: 3216 WJC-South

Start: 5/3/2019 2:00:00 PM
End: 5/3/2019 3:00:00 PM
Show Time As: Tentative

Appointment

From: Loving, Shanita [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=439CE9C2D2104080A1B5908D3402BF20-LOVING, SHANITA]
Sent: 4/22/2019 1:04:19 PM
To: Cook, Steven [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=394f5dede6184bc083cf9390e49a192c-Cook, Steve]; Woolford, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9a70358e7660435cbe6afa87b7b9b71b-Woolford, James]; Mackey, Cyndy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b2f2b414786040ee8d75a21fa1c04a9b-Mackey, Cyndy]; Starfield, Lawrence [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8a89d6cd217d4254a5879abecb3f314e-Starfield, Lawrence]; Wright, Peter [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=11616a3db06f4eceb13ea26c7e6dc1f0-Wright, Pet]; Isayer@midasgoldinc.com; mbogert@midasgoldinc.com; JCruden@bdlaw.com
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Directions and procedures to 1200 Pennsylvania Avenue NW:

Metro: If you come by Metro get off at the Federal Triangle metro stop. Exit the metro station and go up two sets of escalators to the surface level and turn left. You will see a short staircase and wheelchair ramp leading to a set of glass doors with the EPA logo - that is the William Jefferson Clinton Federal Building, South Entrance.

Taxi: Direct the taxi to drop you off on 12th Street NW, between Constitution and Pennsylvania Avenues, at the elevator for the Federal Triangle metro stop - this is almost exactly half way between the two avenues on 12th Street NW. Facing the building with the EPA logo and American flags, walk toward the building and take the glass door on your left hand side with the escalators going down to the metro on your right— that is the South Lobby of the William Jefferson Clinton building.

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From: Bodine, Susan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C2CC6086FCC44C3BE6B5D32B262D983-BODINE, SUS]
Sent: 4/17/2019 8:28:13 PM
To: Bodine, Susan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8c2cc6086fcc44c3be6b5d32b262d983-Bodine, Sus]; Cook, Steven [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=394f5dede6184bc083cf9390e49a192c-Cook, Steve]; Woolford, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9a70358e7660435cbe6afa87b7b9b71b-Woolford, James]; Mackey, Cyndy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b2f2b414786040ee8d75a21fa1c04a9b-Mackey, Cyndy]; Starfield, Lawrence [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8a89d6cd217d4254a5879abecb3f314e-Starfield, Lawrence]; Wright, Peter [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=11616a3db06f4eceb13ea26c7e6dc1f0-Wright, Pet]; Isayer@midasgoldinc.com; mbogert@midasgoldinc.com; JCruden@bdlaw.com
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Subject: CONFIRMED: Meeting with Midas Gold Corp. Idaho, Call-in Number: Redacted Code: Redacted
Location: 3216 WJC-South

Start: 5/3/2019 2:00:00 PM
End: 5/3/2019 3:00:00 PM
Show Time As: Busy

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From: Bellamy, Diana [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=451d390c85814357aef7340b33955ca9-Bellamy, Di]
Sent: 4/12/2019 7:52:53 PM
To: Bellamy, Diana [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=451d390c85814357aef7340b33955ca9-Bellamy, Di]; lisa.alcorn@usda.gov; tamara.allen@state.co.us; kathleenbenedetto@ios.doi.gov; marcie@mountainstudies.org; Bradfish, Larry [Bradfish.Larry@epa.gov]; tbridgeford@nma.org; **Ex. 6 Personal Privacy (PP)**; Castelli, Kayleen [castelli.kayleen@epa.gov]; Chalfant, Mark [Chalfant.Mark@epa.gov]; Chancellor, Erin [chancellor.erin@epa.gov]; acoleman@mt.gov; Warren.colyer@tu.org; mcompton@miningamerica.org; Conway, Bette [Conway.Bette@epa.gov]; Cook, Steven [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=394f5dede6184bc083cf9390e49a192c-Cook, Steve]; Dixon, Douglas [Dixon.Douglas@epa.gov]; MBDonnelly@newmont.com; rellis@imcc.isa.us; Doug.Fitzgerald@mail.house.gov; HOLLY.FLINIAU@OGC.USDA.GOV; jgardner@ndep.nv.gov; jgear@coeur.com; jerry.goad@coag.gov; Gorke, Roger [Gorke.Roger@epa.gov]; jeff.graves@state.co.us; Jay Hawkins [jhawks@osmre.gov]; Hillenbrand, John [Hillenbrand.John@epa.gov]; Courtney Hoover [courtney_hoover@ios.doi.gov]; Ismert, Peter [Ismert.Peter@epa.gov]; Doug Jamison [doug.jamison@state.co.us]; Ketellapper, Victor [Ketellapper.Victor@epa.gov]; aimee.konowal@state.co.us; Kulpan, Bruce [Kulpan.Bruce@epa.gov]; Lentz, Rachel [Lentz.Rachel@epa.gov]; dlloyd@blm.gov; saludwig@fs.fed.us; Mackey, Cyndy [Mackey.Cyndy@epa.gov]; fourmilewatershed@gmail.com; Mahmud, Shahid [Mahmud.Shahid@epa.gov]; McFadden, Angela [McFadden.Angela@epa.gov]; McGrath, Patricia [mcgrath.patricia@epa.gov]; Miles, Erin [Miles.Erin@epa.gov]; Moreen, Ed [Moreen.Ed@epa.gov]; Steve.Moyer@tu.org; ODea, Elise [odea.elise@epa.gov]; Trisha.Oeth@state.co.us; Ostendorf, Jody [ostendorf.jody@epa.gov]; patrick.j.pfaltzgraff@state.co.us; Sachs, Robert [Sachs.Robert@epa.gov]; Isayer@midasgoldinc.com; Dustin_Sherer@gardner.senate.gov; eshirley@blm.gov; hillary_smith@nps.gov; dstruhsacker@sbcglobal.net; kwaltond@usgs.gov; Jason.willis@tu.org; Williams, Laura [williams.laura@epa.gov]; Woolford, James [Woolford.James@epa.gov]; dyoung@keystone.org; kbenedetto@blm.gov; marcie@mountainstudies.org; jparshley@srk.com
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Subject: AML Good Samaritan Meeting April 17th, 2019
Attachments: Good Samaritan Meeting Agenda041219.docx; EPA AML Good Sam White Paper041219.docx; 2007cercla-goodsam-principles-mem.pdf; 2012-good-samaritan-CWAmemo-signed.pdf; EPA Good Sam Discussion '19.pptx; Recommendations from SMCRA Title IV State AML Programs.docx; Black Swan Project Paper 2019.04.10.pdf; EPA Security Protocol desktop version (003).docx
Location: Skype Meeting and In-Person locations at Bison Bitterroot and Rocky Mountain, Denver, CO
Start: 4/17/2019 2:00:00 PM
End: 4/17/2019 11:00:00 PM
Show Time As: Busy

All:

Welcome!

Please find attached materials for this conference.

Please find the above information for those who will be attending the AML Good Samaritan Meeting on April 17th 2019. For those who will be arriving for the conference in-person at the EPA Region8 location in Denver, Colorado, please accommodate time for traffic,

parking, and Security Protocol prior your conference starting time. Coffee and water will be available, The Muffin Company is adjacent to our building, and other eatery nearby. For those who are hotel placed in or near downtown Denver we have the light rail trains and shuttles nearby for ease and comfort from traffic. I encourage you to check with RTD (303) 299-6000; or Google map for train times; the 16th Street Shuttles run every 10 minutes during peak office hours.

For those who will participating by SKYPE please see the link below.

Shahid Mahmud will be arriving in Denver on Tuesday, April 16th approx., 10:00a.m.

On Monday, April 15th and Tuesday, April 16th if you have additional questions regarding security, teleconference, and other, you can reach me at (303)312-6244 or communicate with Shahid.

Diana

**Diana Bellamy, SEE
Assessment & Revitalization Program
(303) 312-6244**

Number of EPA attendees = 52; and 12 persons teleconference -Teleconference number:

Conference Phone Number: Redacted

Conference ID: Redacted

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

June 6, 2007

MEMORANDUM

SUBJECT: Interim Guiding Principles for Good Samaritan Projects at Orphan Mine Sites and Transmittal of CERCLA Administrative Tools for Good Samaritans

FROM: Granta Nakayama, Assistant Administrator, /s/
Office of Enforcement and Compliance Assurance

Susan Parker Bodine, Assistant Administrator, /s/
Office of Solid Waste and Emergency Response

Benjamin Grumbles, Assistant Administrator, /s/
Office of Water

Roger Martella, General Counsel, /s/
Office of General Counsel

TO: Regional Administrators, Regions I-X
Ronald Jay Tenpas, Acting Assistant Attorney General,
Environment & Natural Resources Division, U.S. Department of Justice

I. Background

EPA's Good Samaritan Initiative is an Agency-wide effort to facilitate the cleanup of certain watersheds affected by Orphan Mine Sites (as defined below) by encouraging the efforts of certain non-labile parties ("Good Samaritans") who are willing to voluntarily clean up some of these sites. Concerns about incurring potential liability under the Clean Water Act ("CWA") and the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") as a result of performing cleanup work at orphan mines have long discouraged voluntary cleanups at many of these sites. The Good Samaritan Initiative's principal purpose is to use the federal government's authority to provide greater legal certainty to Good Samaritans and resolve to the extent possible the threat of potential federal liabilities so that voluntary cleanups at these sites can proceed.

This guidance is intended to assist the Regions in the implementation of the Good Samaritan Initiative and focuses on administrative tools developed under CERCLA. As EPA gains more experience implementing this Initiative, the Agency may revise this guidance and the attached administrative tools.

Importantly, the Good Samaritan Initiative preserves CERCLA's "polluter pays" principle. These administrative tools are not intended in any way to absolve responsible parties of their liability under existing federal law for any environmental pollution. Rather, the tools are intended solely to aid non-labile parties in cleaning up Orphan Mine Sites.

EPA Regions, in consultation with the states, have the lead role in implementing the Good Samaritan Initiative. As early as practicable, prior to the implementation of a Good Samaritan project, a Region should consult with the state and any affected tribes regarding planning and implementation of the project. EPA will work with federal land management agencies to determine lead agency status for sites that are partially on federal and non-federal land.¹

The administrative tools discussed in (and attached to) this Memorandum are intended for the performance of a removal action by a Good Samaritan at an Orphan Mine Site where the Good Samaritan's voluntary effort will accelerate partial or complete cleanup and will result in environmental improvement. Good Samaritan cleanups may allow for limited recycling or incidental reprocessing of historic tailings and waste piles to the extent that such actions are necessary for, and directly related to, the cleanup. A Good Samaritan project will not include the new extraction of remaining reserves. New extraction activities would need to comply with all applicable mining requirements. EPA anticipates that Good Samaritan cleanups will take place at sites that are not of federal interest. Thus, EPA does not expect that sites listed (or proposed for listing) on the National Priorities List and sites that are the subject of ongoing or planned removal actions, would be eligible for Good Samaritan cleanups under this Initiative.

II. Important Terms

For purposes of this guidance, the terms below have the following definitions:

"Good Samaritan" means a Person (as defined in CERCLA § 101(21)) who is rendering care, assistance, or advice in accordance with the NCP or at the direction of an onscene coordinator ("OSC"), by voluntarily agreeing to clean up contamination at an Orphan Mine Site, and who:

1. is not a past owner or current owner of the Property (i.e., a specified portion of the site) and has no intention of purchasing the Property in the future;
2. is not potentially liable for the remediation of the Existing Contamination (as defined below) pursuant to Sections 106 or 107 of CERCLA; and
3. is not potentially liable under any other federal, state or local law for the remediation of the Existing Contamination.

¹ For sites where the ownership includes both federally owned and non-federally owned land, EPA and the federal land management agency will need to coordinate with the Good Samaritan concerning the proposed activity. Regions should consult the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP") and Exec. Order No. 12,580, 52 Fed. Reg. 2,923 (1987), as amended by Exec. Order 13,016, 61 Fed. Reg. 45,871 (1996), in determining which agency will be the lead agency for a site.

As stated above, a Good Samaritan is an entity willing to perform cleanup work under CERCLA at an Orphan Mine Site even though it does not own the property, and does not intend to own it in the future. A person who would otherwise qualify as a bona fide prospective purchaser (BFPP) pursuant to Section 101(40) of CERCLA (because, among other things, the person acquires the property being cleaned up) should not be considered a Good Samaritan, but rather would have the protection from CERCLA liability provided by Section 107(r).²

Good Samaritans can include individuals, corporations, non-profit organizations, states, local governments, and municipalities that meet the criteria discussed above.

“Orphan Mine Site” means an abandoned, inactive hard rock mine or primary metal processing mill site for which, despite reasonable and diligent efforts, no financially viable party (except, for purposes of this guidance, the owner of the site who did not cause, contribute to, or exacerbate the contamination) is potentially liable to perform or pay for, or has been required to perform or pay for, environmental cleanup actions under applicable law.

“Existing Contamination” means any hazardous substances, pollutants or contaminants present or existing on or under the Property as of the effective date of the applicable settlement agreement (discussed below); any hazardous substances, pollutants or contaminants that migrated from the Property prior to the specified date; and any hazardous substances, pollutants or contaminants presently at the site that migrate onto or under or from the Property after the effective date of the applicable settlement agreement.

III. Tools to Address Good Samaritan Liability Concerns

Regions should work with states to encourage Good Samaritans to explore the use of state voluntary cleanup programs (VCPs) to perform cleanups at Orphan Mine Sites. VCPs generally are tailored to non-labile parties that volunteer to clean up abandoned, contaminated, lower-risk sites that are not of federal interest. The use of a VCP may be particularly appropriate where a Good Samaritan wishes to perform cleanup work that does not involve discharges to water. Typically, parties performing cleanups in compliance with VCPs receive a covenant not to sue from the relevant state. In addition, under CERCLA, Good Samaritans that clean up “eligible response sites” as defined in CERCLA § 101(40) in compliance with a VCP may enjoy an “enforcement bar” under CERCLA § 128(b), which provides that EPA may not use its CERCLA § 106 and 107 authorities except in specific circumstances.

EPA has developed two administrative tools for situations where a Region determines that potential federal liability under CERCLA should be addressed. These tools are intended to shield a qualifying Good Samaritan from potential liability under CERCLA that could arise as a result of conducting the cleanup of contamination. The first tool is a model Good Samaritan

² Often, BFPPs pursue cleanups at brownfields through state voluntary cleanup programs. In addition, EPA has developed a model work agreement for BFPPs performing significant removal work (beyond their statutory “reasonable steps” obligations) at sites of federal interest. See November 27, 2006 “Agreement and Order on Consent for Removal Action by Bona Fide Prospective Purchaser” at <http://www.epa.gov/compliance/resources/policies/cleanup/superfund/bfpp-ra-mem.pdf>.

Comfort/Status Letter. The second is a Model Good Samaritan Settlement Agreement and Order for Removal Actions at Orphan Mine Sites (“Good Samaritan Settlement Agreement”). Both tools cite to CERCLA § 107(d).³ Guidelines for using these tools are provided in Section IV, below.

EPA, in consultation with the Good Samaritan, will choose the administrative tool that is most appropriate for a specific cleanup at an Orphan Mine Site. Regions should consider several factors when evaluating the most appropriate administrative tool, including:

1. the complexity and scope of the cleanup,
2. the risk and scope of potential liability, including the possibility of contribution litigation by third parties,
3. the availability of EPA resources (e.g., enforcement resources to prepare the administrative tool, oversight resources, etc.) and
4. the Good Samaritan’s risk tolerance.

Regions should collect relevant information from a party wishing to be considered a Good Samaritan and to obtain one of the administrative tools. Relevant information includes:

1. Name and contact information for the Good Samaritan, description of entity (e.g., 501(c)(3), municipality, etc.), and any other information necessary to show the person qualifies as a Good Samaritan;
2. Description of mine site, current and historic owners/operators, nature and extent of contamination, and any prior site investigations or cleanup work performed (and CERCLIS number, if applicable);
3. Proposed work plan and description of the proposed cleanup project and monitoring, including a discussion of how the work will be consistent with the NCP;
4. A draft Health & Safety Plan and Quality Assurance and Sampling Plan;
5. Access agreement between the Good Samaritan who will conduct the work and the landowner;
6. Consent (or indicia thereof) by landowner to enter into agreement with EPA for site access using EPA model access agreement;
7. Evidence satisfactory to EPA that the Good Samaritan has sufficient financial resources to ensure timely and adequate completion of work;
8. A description of any contractual ties and financial arrangements (e.g., funding, site access, etc.) with any party who may have legal responsibility for the cleanup of the mine site;
9. A description of all funding sources for the work, including any funding being provided, directly or indirectly, by an owner of all or part of the site;
10. A description of the Good Samaritan’s environmental record, including, for example, its involvement in prior Good Samaritan or similar cleanup projects, its involvement in environmental litigation or as a potentially responsible party at any other site; or its receipt of notices of violations, and

³ CERCLA § 107(d) provides, in part:

“... no person shall be liable under this subchapter for costs or damages as a result of actions taken or omitted in the course of rendering care, assistance, or advice in accordance with the [NCP] or at the direction of an onscene coordinator appointed under such plan, with respect to an incident creating a danger to public health or welfare or the environment as a result of any releases of a hazardous substance or the threat thereof. This paragraph shall not preclude liability for costs or damages as the result of negligence on the part of such person.”

11. Documentation of findings that there are no liable, viable potentially responsible parties at the site (except for an owner of the site who did not cause, contribute to, or exacerbate the contamination at the site).

As a general matter, all on-site actions performed by a Good Samaritan pursuant to a Section 107(d) comfort/status letter or a Good Samaritan Settlement Agreement are required, to the extent practicable as determined by EPA considering the exigencies of the situation, to attain applicable or relevant and appropriate requirements (ARARs) under federal or state environmental or facility siting laws. Regions are encouraged to prepare Action Memoranda and Administrative Records for Good Samaritan cleanup projects.

Because Good Samaritan cleanups are anticipated to involve watersheds impacted by Orphan Mine Sites, the potential applicability of water quality standards to discharges from these sites as ARARs will need to be carefully considered and will be decided on a case-by-case basis. In some cases, Regions may determine that attainment of water quality standards at Orphan Mine Sites by Good Samaritans performing limited removal actions may not be practicable. Factors that Regions should consider in determining whether compliance with ARARs is practicable include: (1) the urgency of the situation and (2) the scope of the removal action to be conducted. 40 C.F.R. § 300.415(j). Regions should document such site-specific determinations in the Action Memorandum/ Administrative Record for the particular site. Regions should follow their standard procedures for coordinating with appropriate program offices (e.g., the Regional water office) and states in making these determinations. In cases where a Region has determined that attainment of water quality standards is not practicable given the exigencies of the situation, Good Samaritans will be required to meet site-specific work plan requirements for water quality in order to ensure that the project results in environmental improvement.

The Agency views the development of the work plan as a critical component of the Good Samaritan effort, as that is the best opportunity for the parties to discuss factors such as permanency, durability, and future uncertainties. This is particularly important to the success of Good Samaritan efforts, as their work is anticipated to be limited and/or of a defined duration. Completion of the project will be more readily recognized by both parties if uncertainties are acknowledged and expectations are clear from the start. While EPA wants to encourage as many capable and willing Good Samaritans as possible, the Agency always reserves the right to reject any proposed project if there is any concern regarding the environmental benefits that will be achieved, the financial viability or ability of the Good Samaritan to complete the work, or if the success of the project is in doubt.

IV. Guidelines Specific to the Use of the CERCLA § 107(d) Comfort/Status Letter

This administrative tool is intended as a straightforward, non-negotiable document that can be issued relatively quickly at the Regional level. A model Section 107(d) comfort/status letter is attached (see Attachment 1) and can be found at <http://www.epa.gov/compliance/resources/policies/cleanup/superfund/goodsam-comfort-mod.pdf>. The letter is intended to encourage Good Samaritans to perform NCP-compliant work at Orphan Mine Sites without having to invest time and resources in negotiating a formal settlement agreement with the federal government. EPA has successfully used comfort/status letters to provide information and assuage liability concerns

since issuing its Comfort/Status Letter Policy in 1997.⁴ Comfort/status letters addressing aspects of the 2002 Brownfield Amendment landowner liability protections have proven particularly effective at promoting redevelopment. The attached Section 107(d) Comfort/Status Letter is modeled on this success.

Regions should provide a Section 107(d) comfort/status letter only when they determine that the Good Samaritan's proposed work plan is consistent with the NCP. A Regional OSC will oversee the work performed, as necessary, by the Good Samaritan. The extent of the OSC's oversight will depend on the complexity of the work to be performed. Regions should note that the comfort/status letter does not seek oversight reimbursement from the Good Samaritan. Accordingly, Regions should analyze whether their Superfund budgets can absorb the cost of the OSC's time, and should factor these costs into their analysis when deciding whether to provide a Good Samaritan with a Section 107(d) comfort/status letter.

Where appropriate (e.g., the work will involve a discharge to a navigable water), the Section 107(d) comfort/status letter may state that EPA has determined that attainment of water quality standards is not practicable considering the exigencies of the situation, applying 40 C.F.R. § 300.415(j) as a matter of policy. Factors that Regions should consider in determining whether compliance with ARARs is practicable include the urgency of the situation and the scope of the removal action to be conducted. *Id.* As discussed above, this determination is appropriate where justified by site-specific factors and properly documented in an Action Memorandum kept in the Administrative Record for the site. As stated above, Regions should follow their standard procedures for coordinating with appropriate program offices (e.g., the Regional water office) and states in making these determinations.

In addition, the comfort/status letter seeks to address concerns a Good Samaritan may have regarding CERCLA contribution suits by third parties as a result of taking on the voluntary work. The letter states that in the event that a third party brings or threatens a contribution lawsuit, EPA will be prepared to discuss entering into a Good Samaritan Settlement Agreement if appropriate, providing for (among other things) federal contribution protection under CERCLA.

V. Guidelines Specific to the Use of the Sample Good Samaritan Settlement Agreement

A Good Samaritan Settlement Agreement provides a federal CERCLA covenant not to sue and contribution protection in exchange for cleanup work by a Good Samaritan at an Orphan Mine Site. Approval by the U.S. Department of Justice ("DOJ") is required for Good Samaritan Settlement Agreements because the agreements rely on the inherent authority of the Attorney General to compromise and settle claims. A Model Good Samaritan Settlement Agreement is attached (see Attachment 2), and can also be found at <http://www.epa.gov/compliance/resources/policies/cleanup/superfund/goodsam-agreement-mod.pdf>. Good Samaritan Settlement Agreements may be particularly appropriate where the proposed cleanup work is technically complicated and/or where there is a significant possibility of third party litigation. As with the Section 107(d) comfort/status letter, Regions should consider a Good Samaritan Settlement

⁴ "Policy on the Issuance of Comfort/Status Letters," Memorandum from Steven A. Herman, Assistant Administrator, Office of Enforcement and Compliance Assurance, November 8, 1996; reprinted at 62 Fed. Reg. 4,642 (Jan. 30, 1997).

Agreement only where the proposed work is consistent with the NCP and the person qualifies as a Good Samaritan.

Cleanup projects using the model Good Samaritan Settlement Agreement will require evidence of the Good Samaritan's financial responsibility to conduct the cleanup (either up-front financial assurances, or a description of financial assurances that will be obtained after the agreement is signed, but prior to the start of any work), subject to EPA approval.

Possible forms of financial responsibility include:

1. A surety bond unconditionally guaranteeing payment and/or performance of the work;
2. One or more irrevocable letters of credit, payable to or at the direction of EPA;
3. A trust fund established for the benefit of EPA;
4. A policy of insurance that provides EPA with acceptable rights as a beneficiary;
5. A demonstration by the Good Samaritan that it meets the financial test criteria of 40 C.F.R. § 264.143(f) with respect to the estimated cost of the work, provided that all other requirements of 40 C.F.R. § 264.143(f) are satisfied;
6. A written guarantee to fund or perform the work executed in favor of EPA by one or more of the following: (i) a direct or indirect parent company of the Good Samaritan, or (ii) a company that has a "substantial business relationship" (as defined in 40 C.F.R. § 264.141(h)) with the Good Samaritan; provided, however, that any company providing such a guarantee must demonstrate to the satisfaction of EPA that it satisfies the financial test requirements of 40 C.F.R. § 264.143(f) with respect to the estimated cost of the work that it proposes to guarantee hereunder; or
7. A written commitment of grant or other similar funding from a governmental entity, nonprofit or not-for-profit foundation or trust, or similar entity, where the Good Samaritan demonstrates to EPA's satisfaction (i) that the funding entity has adequate financial ability to fulfill its commitment and (ii) that the terms and conditions of such commitment sufficiently secure the funding of the work.

Selecting an appropriate financial responsibility mechanism for a Good Samaritan project is intended to offer maximum flexibility and will be decided on a case-by-case basis considering a host of factors, including but not limited to, the scope and complexity of the cleanup and the financial resources available for the project. EPA does not expect it will be necessary for Good Samaritans to set up an escrow account or put aside funds separate from those needed to complete the project.

EPA understands that a Good Samaritan may have limited funds with which to conduct its voluntary cleanup at an Orphan Mine Site. In the event that a Good Samaritan discovers new information or encounters unknown conditions during a project, and the new information or unknown conditions would result in cleanup costs substantially higher than the estimated cost of the work, EPA will work with the Good Samaritan in good faith to resolve any issues and modify the work plan if appropriate.

VI. Consultation Requirements

Regional consultation at the Division Director level within OECA/OSRE is required prior to issuance of a Section 107(d) comfort/status letter or the negotiation of a Good Samaritan Settlement Agreement. Consultation at the Division Director level within OSWER/OSRTI is required prior to the approval of any work plan submitted by a Good Samaritan. Questions regarding this document, or the attached models, may be directed to Cate Tierney at EPA (tierney.cate@epa.gov) or Tom Carroll at DOJ (thomas.carroll@usdoj.gov).

VII. Disclaimer

This document is intended as guidance for employees of the U.S. Environmental Protection. It does not constitute rulemaking by the Agency and may not be relied on to create a right or benefit, substantive or procedural, enforceable at law or in equity, by any person. The Agency reserves the authority to take action at variance with this guidance document or its implementing procedures.

cc: Allison Starmann, Associate Deputy General Counsel, Office of General Counsel
Lynn Buhl, Deputy Assistant Administrator, Office of Enforcement and Compliance

Assurance

Michael Shapiro, Deputy Assistant Administrator, Office of Water
Scott Sherman, Associate Assistant Administrator, Office of Solid Waste and Emergency

Response

Director, Office of Site Remediation and Restoration, Region I
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Chief, Deputy Chief, and Assistant Chiefs, Environmental Enforcement Section, U.S.
Department of Justice
Chief, Deputy Chief, and Assistant Chiefs, Environmental Defense Section,
U.S. Department of Justice



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC 12 2012

MEMORANDUM

SUBJECT: Clean Water Act § 402 National Pollutant Discharge Elimination System (NPDES) Permit Requirements for "Good Samaritans" at Orphan Mine Sites

FROM: Cynthia Giles, Assistant Administrator
Office of Enforcement and Compliance Assurance

Mathy Stanislaus, Assistant Administrator
Office of Solid Waste and Emergency Response

Nancy K. Stoner, Acting Assistant Administrator
Office of Water

Scott C. Fulton
General Counsel

TO: Regional Administrators, Regions I-X

On June 6, 2007, the EPA issued "Interim Guiding Principles for Good Samaritan Projects at Orphan Mine Sites and Transmittal of CERCLA Administrative Tools for Good Samaritans" (hereinafter, the "2007 Guidance").¹ We have received inquiries regarding the applicability of the Clean Water Act ("CWA") § 402 National Pollutant Discharge Elimination System ("NPDES") requirements to the activities of Good Samaritans and to their potential for long-term liability under that statute. This memorandum describes two clarifications, one under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") and one under the CWA. These clarifications may be considered separately or used in conjunction with one another depending on site-specific facts and needs.

As a general matter, a Good Samaritan, as described in the 2007 Guidance, would not be the entity responsible for obtaining an NPDES permit under the CWA after the successful completion of activities under a CERCLA removal plan developed pursuant to an Administrative Settlement Agreement and Order for Removal Actions at Orphan Mine Sites, or Good Samaritan

¹ The 2007 Guidance and this memorandum are intended as guidance for employees of the U.S. Environmental Protection Agency. They do not constitute rulemaking by the Agency and may not be relied on to create a right or benefit, substantive or procedural, enforceable by law or in equity, by any person. The Agency reserves the authority to take action at variance with such guidance.

Comfort/Status Letter (collectively, the "CERCLA tool") with the EPA, so long as the Good Samaritan does not perform additional work at the mine site.² While performing work under a CERCLA tool, the Good Samaritan would be exempt from CWA permitting requirements for any discharges, including any periodic monitoring that occurs under the CERCLA tool. After completion of work under the CERCLA tool and as described further below, the Good Samaritan would also generally not be the entity responsible for obtaining an NPDES permit even where a discharge continues from a passive treatment system. Although we expect this memorandum to provide clarification regarding permit obligations for Good Samaritans, we recognize that it does not address or resolve all potential liability associated with discharges from abandoned mines.

This memorandum does not address responsibility under the CWA for any "person," other than a Good Samaritan performing work under the 2007 Guidance, who discharges pollutants from a point source to waters of the United States. This memo applies only to situations where parties have no relationship with, responsibility to, and/or liability for any existing pollution at the site, except for their actions taken as a Good Samaritan as described in the 2007 Guidance.

Discussion

The 2007 Guidance provides that discharges from on-site³ response actions associated with creating or modifying point sources do not need an NPDES⁴ or any other federal permit during the CERCLA removal action under the provisions of CERCLA §121(e), and 40 C.F.R. §300.400(e)(1). Whether Good Samaritans operate under an Administrative Order or a Comfort/Status Letter, a Good Samaritan would not have CWA permit obligations if all activities are carried out as described in the CERCLA tool as developed in accordance with the 2007 Guidance.⁵ As stated in the 2007 Guidance, it is advisable for the Region and the Good

² Consistent with the 2007 Guidance, this memorandum addresses Good Samaritan activities at abandoned or orphaned hard rock mining sites. We express no opinion regarding the application of this memorandum to mining activities other than those being undertaken by a Good Samaritan at hard rock mine sites.

³ EPA believes that any treatment system addressing an abandoned mine discharge would be entirely "on-site." Section 300.400(e)(1) of the National Contingency Plan (NCP) defines "on-site" to include "the areal extent of contamination and all suitable areas in very close proximity to the contamination necessary for implementation of the response action." Further, in the preamble to the proposed NCP, EPA stated that "a direct discharge of CERCLA wastewater would be an on-site activity if the receiving water body is in the area of contamination or is in very close proximity to the site, even if the water flows off-site."

⁴ 40 C.F.R. § 122.3(d) (States that "Any discharge in compliance with the instructions of an On-Scene Coordinator pursuant to 40 C.F.R. part 300 ..." does not require an NPDES permit.)

⁵ See 2007 Guidance, pages 3-7. Unlike a Comfort/Status Letter, an Administrative Settlement Agreement and Order for Removal Actions at Orphan Mine Sites also provides the Good Samaritan with a federal CERCLA covenant not to sue and contribution protection. *Id.* Page 6-7. See also 40 C.F.R. § 122.3(d).

Samaritan to agree, before the cleanup actions begin, on all aspects of the cleanup covered by the CERCLA tool and those actions should be specified in a workplan or statement of work attached to the order. The provisions of the CERCLA tool should include post-removal site control or any other activities performed by the Good Samaritan that could result in potential discharges. In addition, the Good Samaritan should complete any earth-disturbing or site stabilization activities and operations and maintenance activities under the CERCLA tool.⁶

As discussed in the 2007 Guidance, all on-site actions performed by a Good Samaritan pursuant to a CERCLA § 107(d) Settlement Agreement and Order for Removal Action, or Comfort/Status letter, are required, to the extent practicable as determined by the EPA considering the exigencies of the situation, to attain applicable or relevant and appropriate requirements (ARARs) under federal environmental or state environmental or facility siting laws. In some cases, Regions may determine that attainment of water quality standards at Orphan Mine Sites by Good Samaritans performing removal actions may not be practicable. If a Region makes such a determination, Good Samaritans would be expected to meet site-specific work plan requirements for water quality in order to ensure that the project results in environmental improvement.⁷

One option available to the EPA and the Good Samaritan would be for a Region to determine that the Settlement Agreement and Order for Removal action, or Comfort/Status letter, should include a provision which requires Good Samaritans to continue the removal action performance through periodic monitoring or other activities which would help ensure that the project results in environmental improvement. Continued Good Samaritan removal action performance would remain subject to the CERCLA § 121(e) and 40 C.F.R. § 300.400(e) permit exception provisions.

For the Good Samaritan, the issue of CWA liability can arise after the Good Samaritan satisfactorily completes its obligations pursuant to the CERCLA tool and leaves the site, but the discharge of pollutants from a point source continues. Section 301(a) of the CWA provides that “[e]xcept as in compliance with this section and sections ... [402] ... of this Act, the discharge of any pollutant by any person shall be unlawful.”⁸ The EPA’s NPDES regulations provide that “any person who discharges or proposes to discharge pollutants” has a duty to apply for an NPDES permit.⁹ The regulations clarify that when “a facility is owned by one person but

⁶ The 2007 Guidance, page 5, discusses development of a workplan that can be used to deal with such matters.

⁷ See, 2007 Guidance discussion in Part III, the Model Good Samaritan Comfort/Status Letter and Model Settlement Agreement and Order for Removal.

⁸ 33 U.S.C. § 1311(a). The terms “discharge of a pollutant,” “person,” and “point source” are defined in sections 502(12), (5) and (14) of the CWA, respectively. 33 U.S.C. § 1362.

⁹ 40 CFR § 122.21(a). The CWA is a strict liability statute making any person who discharges a pollutant from a point source into waters of the U.S. liable for that discharge under Section 301(a) unless, inter alia, the discharge is authorized under the Section 402 NPDES permit

operated by another, it is the operator's duty to obtain a permit."¹⁰ The NPDES regulations require the "operator" to obtain a permit because the operator of a facility or activity is likely to be an entity capable of exercising control over the discharge, and therefore capable of ensuring any discharge is in compliance with applicable permit limits.

As described in the 2007 Guidance, by definition, a Good Samaritan cannot be an "owner" of an orphan mine site or have a legal obligation to take action where they are working to improve the site and/or its discharges.¹¹ While performing work under the CERCLA tool, the Good Samaritan would, as the "operator", ordinarily be the entity under the CWA responsible for obtaining a permit. However, under the CERCLA exemption, as long as the Good Samaritan's on-site activities are conducted pursuant to the CERCLA tool, those activities do not require an NPDES permit. The question *after* the CERCLA action is satisfactorily completed is whether the Good Samaritan would be considered an "operator" of any discharges that continue at the facility. In the context of a successful Good Samaritan cleanup, the Good Samaritan would not be the entity responsible for obtaining an NPDES permit *after* the CERCLA removal action is complete if they are no longer the "operator" of the facility.

The initial question to be considered is whether the Good Samaritan successfully completed the work described in their CERCLA tool. If so, then the following factors may be used to determine whether a Good Samaritan would be an "operator" who is responsible for obtaining an NPDES permit after completion of work under the CERCLA tool.¹² (Positive answers would suggest a Good Samaritan may be an operator, while consistently negative answers would indicate the Good Samaritan is likely not an operator):

- Does the Good Samaritan have access and authority to enter the site?
- Does the Good Samaritan have an ongoing contractual agreement or ongoing relationship with the owner of the site to control any remaining discharge(s)?

program. The NPDES regulations establish the process and requirements for applying for an NPDES permit.

¹⁰ 40 C.F.R. § 122.21(b). 40 C.F.R. § 122.2 defines "owner or operator" as the "owner or operator of any 'facility or activity' subject to regulation under the NPDES program."

¹¹ 2007 Guidance, page 2.

¹² These factors for considering whether a Good Samaritan ought to be considered an "operator" reflect the factors EPA has considered in its establishment of requirements for submission of Notices of Intent for coverage under EPA's NPDES general permits for stormwater discharges from industrial activity (the multi-sector general permit (MSGP)), for stormwater discharges from construction activity (CGP) and for discharges from the application of pesticides (PGP), and with the requirements for filing Notice of Termination to end coverage under those permits. See 73 FR 56572 (Sept. 29, 2008) and Appendix H, 77 Fed. Reg. 12286 (Feb. 29, 2012) and Appendixes J and K of the CGP; 76 Fed. Reg. 68750 (Nov. 7, 2011) and Appendixes D and E of the PGP. These factors are also consistent with the District Court's decision in *Beartooth Alliance v. Crown Butte Mines*, 904 F.Supp. 1168, 1175 (D. Mont. 1995).

- Does the Good Samaritan have the power or responsibility to make timely discovery of any changes to the discharge(s)?
- Does the Good Samaritan have the power or responsibility to direct any activities of persons who control the mechanisms, if any, causing the ongoing discharge(s)?
- Does the Good Samaritan have the power or responsibility to prevent and abate the environmental damage caused by the remaining discharge(s)?

If the Good Samaritan, after successfully completing its obligations under the CERCLA tool, answers “no” to all of the factors above, then the Good Samaritan should not be considered an “operator” responsible for obtaining NPDES permit coverage even where a discharge continues from a passive treatment system. While the Good Samaritan would not be the entity responsible for obtaining an NPDES permit, any remaining point source discharges of a pollutant would require a permit. If no other “operator” is present, the facility owner would generally be responsible for obtaining any necessary NPDES permits because the owner is most likely to be the entity with control over the discharges. In many cases, the EPA anticipates there may be unpermitted discharges that continue after the CERCLA action is complete.

Case Law

Since the EPA issued the 2007 Guidance, a number of potential Good Samaritans have asked the Agency about some judicial opinions that heighten the Good Samaritans’ concerns regarding long term liability under the CWA. The case law supports the positions described in this memorandum.

The case raised to the EPA’s attention most often in discussions regarding potential long-term liability for Good Samaritans under the CWA has been *Committee to Save the Mokelumne River v. East Bay Municipal Utility District*, No. CIV. S-91-1372-LKK, 1993 U.S. Dist. LEXIS 8364 (E.D. Cal. Mar. 3, 1993) (*East Bay MUD*).¹³ This case does not weaken or contradict the EPA’s expectation that Good Samaritans will generally not be responsible for obtaining NPDES permit coverage for discharges continuing after completion of work they do to remediate legacy pollution problems at abandoned mine sites. Although the district court found both defendants liable for discharges from a treatment facility, at least one of the defendants was an “owner” of the discharging facility and the other defendant exercised “intimate ... control over [the facility’s] discharges.” *Id.* at *40. As discussed below, neither of the defendants in this case would qualify as Good Samaritans under the 2007 Guidance.

The plaintiff in *East Bay MUD* alleged that the East Bay Municipal Utility District (the “District”) and the California Regional Water Quality Control Board (the “Board”) were discharging pollutants from the Penn Mine facility into the Mokelumne River without an NPDES permit in violation of the CWA. *Id.* at *2. Copper and zinc mining operations at the Penn Mine property had been abandoned in the 1950’s after approximately a century of activity. *Id.* at *3. Around 1966, the District acquired a portion of the abandoned property and, in 1978, the District

¹³ *East Bay MUD* was upheld on appeal, but the arguments discussed in this memorandum were not among those raised on appeal. *Committee to Save Mokelumne River v. East Bay Municipal Utility District*, 13 F.3d 305 (9th Cir. 1993).

and the Board built a treatment facility on the property in an attempt to reduce polluted runoff, which included acid mine drainage. *Id.* at *3-4. The Board argued that it could not be held responsible for obtaining an NPDES permit for the periodic discharges from the facility it and the District built because the Board did not own the facility. *Id.* at *35. The district court rejected this argument, reasoning that a non-owner may be liable if it has “control over discharges” in its capacity as an “operator.” *Id.* at *38-39. Such control was demonstrated in this case because the Board had not only purchased and installed the pump and pipes involved in the facility, but it (1) paid for repair and replacement of the pump, (2) paid for the electricity to operate the pump, (3) held land use permits for continued housing and operation of the pump, and (4) retained “veto power of decisions concerning releases” from the facility. *Id.* at *40-41.

We generally do not expect Good Samaritans as described in the 2007 Guidance to be responsible for obtaining NPDES permit coverage as were the defendants in *East Bay MUD* because Good Samaritans should not be considered owners or operators of the site or facilities at issue once they have completed all activities at the site pursuant to a CERCLA tool. The District was an “owner” of the facility at issue in *East Bay MUD*, and although the district court did not clearly conclude whether the Board was also an “owner,” the court’s reasoning indicates that it considered the Board to be liable because of the control the Board had over discharges from the facility. Such control would render an entity an “operator” under the factors outlined in the previous section of this memorandum.

Another case raised by prospective Good Samaritans more recently is *West Virginia Highlands Conservancy v. Huffman*, 625 F.3d 159 (4th Cir. 2010) (*Highlands*). In this decision, the United States Court of Appeals for the Fourth Circuit upheld an injunction imposed by the district court requiring the West Virginia Department of Environmental Protection (WVDEP) to obtain an NPDES permit for the discharges associated with reclamation efforts at some abandoned coal mining sites. *Id.* at 161. The Court of Appeals cited the EPA’s regulations at 40 C.F.R. § 122.21(b) (“When a facility or activity is owned by one person but is operated by another person, it is the operator’s duty to obtain a permit.”) as confirmation of its conclusion that “where, as here, the mine owner generates pollution but then abandons the site, the subsequent operator is the party responsible for obtaining a permit.” *Id.* at 167. We believe this decision has been raised by various prospective Good Samaritans because the Court of Appeals explicitly rejected an argument made by intervenor Interstate Mining Compact Commission (IMCC) that requiring WVDEP to obtain an NPDES permit for the discharges it was managing would “discourag[e] volunteer ‘good Samaritans’ from entering into ‘public/private partnerships’ at bond forfeiture sites for fear of ‘incurring liability ... for failure to meet NPDES permit requirements.’” *Id.* at 169.

The *Highlands* case does not contravene the analysis set forth in this memorandum. Although some of the governmental bodies that take over the operation (or possession) of abandoned mine sites will become owners or operators of those sites as in the *Highlands* case, we do not expect Good Samaritans to maintain control of such sites in a way that would render them “operators” within the NPDES regulations after completion of work under the CERCLA tool. We understand that the *Highlands* court was not swayed by the argument that requiring WVDEP to obtain an NPDES permit might discourage “good Samaritans” from conducting work at abandoned mine sites. However, the Court’s use of the term “good Samaritans” appears to be

lifted from IMCC's argument, and there is no indication that the Court had in mind any particular Good Samaritan or that it had considered the EPA's 2007 Guidance. Nothing in the Court's analysis suggests that a Good Samaritan that lacks sufficient control over ongoing discharges at an abandoned mine site should be treated as an "operator" responsible for obtaining a permit for such discharges.

Conclusion

For the reasons described above, a Good Samaritan that satisfactorily completes its obligations pursuant to the CERCLA tool would generally not be responsible for obtaining an NPDES permit during the response activities by virtue of CERCLA § 121(e) and 40 C.F.R. §§ 300.400(e)(1) and 122.3(d), or after completion of the response activities, so long as the Good Samaritan is no longer an "operator" based on the factors described in this memorandum. If you have any questions about this memorandum, please contact Gary Hudiburgh at (202) 564-0626 or Roger Gorke at (202) 564-0470.

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Black Swan Good Samaritan Project, Boulder County, Colorado

Project Overview and Benefits

In 2018, EPA negotiated a CERCLA administrative order on consent (“AOC”) with non-profit Fourmile Watershed Coalition to conduct a removal action under EPA oversight at the Black Swan Site (“Site”), an orphan mine site in Boulder County, Colorado. This project falls under EPA’s Good Samaritan Initiative, which adopted CERCLA administrative tools including a model AOC and comfort letter. The purpose of these administrative tools is to reduce barriers under CERCLA for non-labile volunteers to clean up orphan mine sites.

As part of EPA’s Good Samaritan Initiative, the proposed Good Samaritan project advances local, state and federal flood recovery efforts and offers tangible environmental benefits. The Site is located downstream from several historic orphan mines and is itself an orphan mine site. Mine waste rock and tailings at the Site were at risk of being eroded into Fourmile Creek. Some of these materials required removal to complete additional state and county-led stream restoration and stabilization activities necessitated by flood and fire events. These materials contribute metals such as arsenic and cadmium to the creek and have a potentially harmful effect on water quality and may pose risks to human health or the environment. The Good Samaritan followed a detailed work plan that addresses water quality issues to promote environmental improvement.

Site Description

The Site encompasses approximately 3 acres, located along Fourmile Creek in Boulder County, Colorado. The Black Swan Restoration Project is located approximately seven miles outside of the City of Boulder below the confluence of the Gold Run drainage and Fourmile Creek. Mine waste material was located on the west side of Fourmile Creek at the property located at 4389 Fourmile Canyon Drive. The historic Black Swan Mill was located across the street from the mine waste. Other mining activity upstream of the 4389 Fourmile Canyon Drive property has adversely affected the Fourmile Creek watershed, including tailings and waste rock material. The County of Boulder currently owns the Site, which it acquired in the aftermath of the historic 2013 Colorado Front Range floods. In 2014 the EPA completed an emergency removal action of 18,864 CY of mine tailings exposed during the 2013 flood a quarter mile upstream of the Black Swan site.

The Fourmile Watershed Coalition originally submitted an application for Community Development Block Grant – Disaster Recovery funding to complete a flood recovery stream restoration project. Funds were awarded without the knowledge that mine waste existed in the floodplain. When the home at 4389 Fourmile Canyon Drive was demolished due to severe damages from the flood the contractor turned up mine waste while attempting to locate the septic system with an excavator. At this time the Coalition pursued integrating mine waste removal into the scope of the stream restoration project.



September 2013: Mine tailings located under the home in the photo (4389 Fourmile Canyon Drive).



Post 2013 flood. The stream is located in the foreground in front of the pine tree, mine waste is beneath the sediment.



During Construction.



Post construction.

Project Proponents

Good Samaritans Fourmile Watershed Coalition (“FWC”) and the Four Mile Fire Protection District (“FMFPD”) (collectively referred to as the “Good Samaritan”) requested that EPA enter into a Good Samaritan CERCLA AOC. FWC is a non-governmental organization comprised of local landowners, community members, and other stakeholders dedicated to disaster recovery efforts and stream restoration in Fourmile Watershed. Good Samaritan FMFPD is a Special District organized under the Colorado Special District Act, C.R.S. § 32-1-101 et. seq., which provides fire protection and emergency response services throughout the district in Boulder County, Colorado. FMFPD is the fiscal agent for FWC. The Good Samaritan certified in the AOC that it is not a liable party under CERCLA, and that it does not intend to acquire ownership in the property as described below.

Proposed Project and Timing

The removal action included excavating almost 1,900 cubic yards of mine tailings and hauling it to a landfill for off-site disposal. The focus of this response action were the mine tailings located at the 4389 Fourmile Canyon Drive property in the Fourmile Creek watershed. The Good Samaritan hired Frontier Environmental Services, an experienced and knowledgeable contractor, to perform the work.

Funding

The United States Department of Housing and Urban Development, Office of Planning and Development (“HUD”), awarded FMFPD as the fiscal agent for FWC Community Development Block Grant- Disaster Recovery funds in the amount of \$1,509,640 to conduct a resilient stream restoration project. The Colorado Department of Local Affairs (“DOLA”) administered the HUD grant, which was approved on August 28, 2017. These funds were held by DOLA, which provided payments to FMFPD on a rolling basis as costs are incurred. Actual project costs were \$1,122,102.

CERCLA AOC

The Black Swan CERCLA AOC closely follows the updated 2018 model CERCLA AOC and was vetted with EPA HQ’s Office of Site Remediation Enforcement. The signatories to the AOC are the Assistant Regional Administrator for EPA Region 8 Office of Enforcement, Compliance and Environmental Justice and the Acting Assistant Attorney General for the Department of Justice’s Environmental and Natural Resources Division. The AOC became effective following a mandatory 30-day public comment period. EPA received no public comment on the proposed AOC.

EPA Oversight Costs

In the CERCLA AOC, the Good Samaritan agreed to pay EPA’s oversight costs, which were estimated to fall in the \$5,000-10,000 range. EPA’s actual oversight costs were \$12,033.

State Coordination

EPA Region 8 coordinated closely with the State of Colorado on the draft CERCLA AOC, work plan, and CERCLA applicable or relevant and appropriate requirements (“ARARs”).

EPA Contacts:

EPA Technical: Duc Nguyen, Federal On-Scene Coordinator, 303-312-6509
EPA Legal: Mark Chalfant, Senior Enforcement Attorney, 303-312-6177

Project Timeline

- ✓On February 12, 2018, counsel for the Good Samaritan initially contacted EPA with a request to enter AOC negotiations. The Region furnished the Good Samaritan the HQ model AOC.
- ✓On March 23, 2018, the Good Samaritan provided a discussion draft of the AOC to the Region. This did not include a detailed work plan.
- ✓On April 23, 2018, counsel for the Good Samaritan advised agency counsel that its contractor was still drafting the work plan.
- ✓On April 16, 2018, the Region, in the meantime, formally requested ARARs identification from the Colorado Department of Public Health and Environment. This triggered a 30-day review period by prior agreement between EPA and the State.
- ✓On April 25, 2018, EPA reached an agreement-in-principle with the Good Samaritan, thereby finishing AOC negotiations except for 4 discrete issues, including ARARs identification and EPA oversight costs. The Good Samaritan subsequently engaged in extensive discussions with its funding entity (Colorado Department of Local Affairs) regarding the payment of EPA oversight costs.
- ✓On April 27, 2018, the Good Samaritan provided a draft detailed work plan to EPA for agency review. EPA subsequently provided technical comments on the work plan.
- ✓On May 15, 2018, the State of Colorado provided its proposed ARARs identification to the Region. The Region subsequently had follow-up discussions with both the State and the Good Samaritan regarding ARARs.
- ✓On May 18, 2018, counsel for the Good Samaritan apprised agency counsel that its contractor was still working to incorporate EPA's technical comments on the draft work plan.
- ✓On June 5, 2018, the Good Samaritan returned a signed copy of the proposed AOC to EPA, along with the revised work plan.
- ✓On June 18, 2018, EPA signed the proposed AOC.
- ✓On June 20, 2018, DOJ signed the proposed AOC. DOJ provided a copy of the signature page to EPA on June 26, 2018.
- ✓On July 2, 2018, the Region officially filed the AOC with the Regional Hearing Clerk.
- ✓On July 17, 2018, the Good Samaritan requested that EPA issue a CERCLA comfort letter to expedite field work and EPA's On-Scene Coordinator issued the comfort letter that same day after legal review.
- ✓On July 20, 2018, the Federal Register notice was published, triggering a 30-day public comment period on the proposed AOC.
- ✓On August 20, 2018, the 30-day public comment period closed. No public comment was received.
- ✓On August 21, 2018, EPA filed a Notice of Effective Date with the Regional Hearing Clerk and notified the Good Samaritan that the AOC and its legal protections were effective.
- ✓On August 6, 2019, FWC's contractor began field work.
- ✓On December 29, 2019, field work was complete except for limited water quality monitoring and possible additional revegetation.

U.S. EPA Abandoned Mine Lands Good Samaritan Initiative

April 12, 2019

Purpose

Environmental Protection Agency's (EPA) Good Samaritan ("Good Sam") Initiative promotes partnering with key stakeholders to carry out demonstration projects to remediate abandoned mine land (AML) sites. EPA hopes to initiate work on simple, low-cost projects next year while working with stakeholders to develop streamlined documents to facilitate work on more complicated and higher cost projects in two years.

Problem Statement

Hardrock AMLs are generally contaminated with metals and pose both short- and long-term human health, environmental, and physical safety hazard risks, which affect tourism, local economies and jobs. The scale of the AML problem is immense, and for this reason, assessing and cleaning up the AML site universe will likely require a broad-based, collaborative approach involving, as needed, federal, state, tribal, local governments, academia, industry, and non-governmental organizations. EPA's initiative acknowledges that Good Sam legislation at hardrock mines could greatly facilitate and expedite Good Sam projects.¹

EPA believes that Good Sam cleanup projects may provide a cost-effective way to help address human health and environmental risks at a subset of AML sites. As an initial step, EPA is asking for assistance in identifying potential Good Sam AML demonstration projects at 5-10 sites. EPA is proposing this AML initiative to advance more of these project types. EPA seeks to work with interested stakeholders to identify candidate Good Sam sites and, where appropriate, to obtain agreements with Good Sam parties to proceed with these CERCLA projects in a timely manner.

Good Samaritan Project Scope

EPA has identified three levels of projects under this initiative ranging in complexity (from least to most complex) as follows:

- **Level 1 – Source Control Only (Dirt) Projects:**
 - Source control projects including, but not limited to, excavation, disposal, or containment of solid source areas such as waste rock, tailings, heap/dump leach and process areas.
 - Structural/physical safety projects to protect the public health, welfare, or the environment.
 - Excludes water treatment projects.
- **Level 2 – Water Diversion and/or Treatment Projects:**
 - Surface water diversion projects (e.g., rerouting surface drainage, stormwater, or snow melt around source areas to keep clean water clean).
 - Management and/or treatment of mine influenced waters both above and below ground.
- **Level 3 – Reprocessing Projects:**
 - Reprocessing of mining source areas to offset project costs if this reprocessing is done at another permitted facility and is limited to recovering valuable metals from waste and not new mining.

¹ While EPA's primary emphasis under this initiative is to promote Good Sam demonstration projects at hardrock mining AML sites, EPA has determined that both the June 2007 "Interim Guiding Principles for Good Samaritan Projects at Orphan Mine Sites and Transmittal of CERCLA Administrative Tools for Good Samaritans" and the December 2012 "Clean Water Act Section 402 National Pollutant Discharge Elimination System (NPDES) Permit Requirements for 'Good Samaritans' at Orphan Mine Sites" could be applied to Good Sam activities at both hardrock mining and coal mining AML sites.

Liability Relief Options

EPA offers the following existing liability relief tools for Good Sam projects:

- **Level 1 – Source Control Only (Dirt) Projects:**

- For projects conducted under CERCLA, EPA can enter into a CERCLA administrative settlement agreement and order on consent (ASAOC) pursuant to CERCLA (*see* 42 U.S.C. §§ 9601-9675) and the authority of the Attorney General of the United States. Such ASAOCs may include the following provisions:
 - Provide CERCLA contribution protection for the matters addressed in the ASAOC to the work party and entities providing funding to the party carrying out the work. To get such liability protection, those funding entities would have to agree to sign the ASAOC and be bound by its terms.
 - Covenants: EPA covenants that indicate EPA’s intention to not pursue the Good Sam in the future (with standard caveats/reservations about negligent acts or working outside of the scope of the ASAOC).
- For projects conducted pursuant to certain state programs governing response actions (e.g., some voluntary cleanup programs (VCPs)), the Good Sam could:
 - Seek a covenant not to sue from the state.
 - In addition, the Good Sam may be able to obtain a covenant not to sue from the state for other response actions that fall outside the scope of CERCLA § 128(b).
 - Be eligible for the CERCLA §§ 106 & 107 enforcement bar provided under CERCLA § 128(b) for projects conducted at “eligible response site[s],” as defined by CERCLA § 101(41).
 - Be issued EPA comfort/status letters regarding EPA intent.

- **Level 2 – Water Diversion and/or Treatment Projects:**

- EPA may provide the relief options identified for Level 1 projects above.
- Potentially extend the order on a long-term basis, as appropriate.
- EPA generally expects that diverting and/or rerouting of clean water away from contamination would not need any specific Clean Water Act (CWA) permit or approval, but EPA, or a delegated state, would need to determine if a permit is needed on a site-specific basis.
- EPA’s Office of Water seeks to engage with willing states to use the water quality standards (WQS) tools for site-specific variances and to use modifications to provide and/or enable legal Good Sam CWA National Pollutant Discharge Elimination System (NPDES) permits for point source discharges of pollutants.

- **Level 3 – Reprocessing Projects:**

- EPA will develop parameters for these more complicated projects after both further internal discussion and external stakeholder discussion.

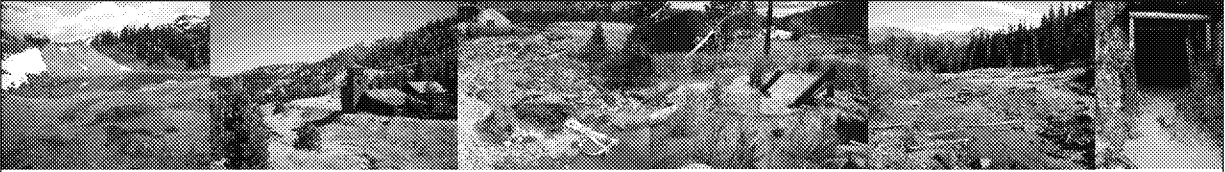
U.S. EPA Abandoned Mine Lands Good Samaritan Initiative

April 12, 2019

Next Steps

EPA envisions a two-track approach in carrying out this initiative.

- **Track 1** (shorter track):
 - Identify a set of Level 1 demonstration projects that can be initiated in 2019.
 - Work closely with these project proponents to share existing examples of Good Sam project documents and to obtain agreements for commencement and implementation of these projects in a timely manner.
- **Track 2** (longer track):
 - Obtain input from Good Sam stakeholders (e.g., Trout Unlimited, mining groups) on potential modifications to existing models.
 - Have stakeholder discussions regarding WQS tools for site-specific WQS variances to obtain Good Sam CWA NPDES permits for point source discharges of pollutants.
 - Develop documents to facilitate Level 2 projects based on stakeholder input.
 - Work with stakeholders to identify Level 2 projects with the goal to initiate projects in 2020.

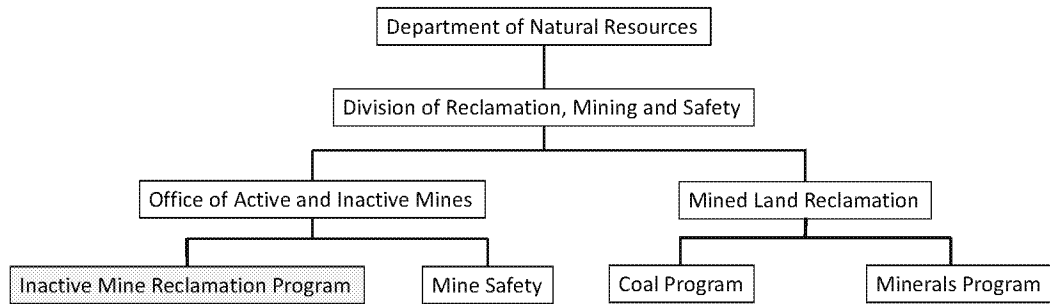


DRMS AML Non-point Source Clean Ups

JEFF GRAVES, PROGRAM DIRECTOR, INACTIVE MINE RECLAMATION PROGRAM
COLORADO DIVISION OF RECLAMATION, MINING AND SAFETY



DRMS



Mission: Undertake reclamation aimed at reducing hazardous situations associated with past mining activities.

Abandoned Mine Lands/Inactive Mines/Legacy Mines



- Operated prior to 1977 (coal) or prior to 1980 (non-coal).
 - Not currently or previously bonded with State for reclamation.
- No broad State level regulatory framework for AML sites.
 - SMCRA, CWA, CERCLA, RCRA, Water Rights, possibly others.
- Inactive Mine Reclamation Program
 - Not regulatory.
 - Design and Implement cleanup projects.

Non-point Source Projects History

1980~1990: State AML program engaged in investigations of environmental issues at hardrock sites. Small scale projects included run-on/run-off controls, waste consolidation, capping and passive treatment.

1990-1992: Larger scale projects designed and begun under CWA 319 Program by AML and CDPHE programs. Projects included run-on/run-off controls, larger waste consolidations, capping, passive treatment, stream re-routes.

1992: MOU between EPA, Mined Land Reclamation Division (now DRMS), Colorado Dept. of Health (now CDPHE) signed, addressing CERCLA liability concerns. Time Critical Removal Actions utilized as mechanism for clean-ups.

1993: Dodson (Director, EPA Water Management Div.) letter to Region 8 States clarifies that all "mine adits are quite clearly point sources." All efforts to treat mine effluent at historic sites through CWA 319 Non-point Source Program are abandoned. Sites included Wellington-Oro (French Gulch), Mary Murphy, Solomon Mine, Pennsylvania Mine, Perigo Mine, and London Mine.

History Cont'd

1994-2015: Significant work continues under MOU to address non-point source issues through run-on/run-off controls, waste consolidation, capping, in-situ waste treatment and amendment. Source control methods of adit discharge pursued in lieu of treatment (bulkhead construction, clean/dirty water segregation, infiltration reduction). USFS and BLM utilized RAMs through their CERCLA authority in partnership with DRMS to address non-point source issues.

2015: Gold King. EPA stopped signing RAMs for 319 work and determined bulkhead construction ineligible for 319 funding. AML non-point source work requiring EPA CERCLA authority ceased. USFS and BLM work continued under their CERCLA authority.

2017: EPA terminated 1992 MOU with State citing other mechanisms available to complete non-point source work.

Thoughts on History

- Prior to 1993 letter, the State viewed draining adits as part of the non-point source issue on a mine site and not really captured under CWA NPDES. There was little threat of third party lawsuits under CWA.
- After 1993 all work shifted to addressing truly non-point source issues like run-off from waste piles and tailings. Addressing adit discharge was pursued through source control which was viewed as a means to avoid CWA liability.
- 1992 MOU was an extremely effective tool in facilitating AML cleanups that included multiple gov't agencies, NGOs and private entities. All parties felt "protected" from CERCLA liability, and sensed little risk from CWA since point source treatment wasn't part of the project.
- Most non-point source projects were begun after development of strong stakeholder support working through local watershed groups.
- Prior to Gold King, most hardrock environmental work was completed in the gray areas of CERCLA and CWA far from the spotlight of politics. After Gold King, the risk of liability exposure and political pressure were highlighted.

What has worked?

- Working under an MOU/RAMs with EPA and CDPHE to avoid CERCLA liability.
- Utilizing USFS and BLM CERCLA authority to accomplish NPS work on federally managed lands.
- Avoiding CWA liability by not treating mine discharge.
- Developing strong and diverse stakeholder groups.
- Allowing local communities through watershed groups to guide project selection and prioritization.
- Implementing proven best management practices to address NPS issues.
- Evaluating potential projects on a site by site basis. No “one size fits all” approach.
- Avoiding long term O&M through appropriate remedy selection and design.
- Measuring success based on implementation of BMPs (performance criteria), not just chemical criteria downstream.

How the MOU worked

- Provided CERCLA protection through Time Critical Removal utilizing 107d language.
- Developed a process for project assessment:
 - State appointed State Project Officer (SPO);
 - State conducts preliminary site assessment;
 - Project evaluation conducted by numerous stakeholders;
 - State determines whether 319 action is appropriate;
 - Project Implementation Plan (PIP) is developed including EE/CA of alternatives;
 - ARARs identified in PIP and met “to the extent practicable considering the exigencies of the situation”;
 - State PIP reviewed by EPA OSC, and if approved, State is directed to proceed.
- Numerous NPS projects were completed with multiple partners following this process.
- If the MOU was still in place more NPS projects would be undertaken!

What has not worked?

- Treating mine discharge without incurring CWA liability.
- Completing NPS projects using EPA MOU after Gold King.
- Measuring success merely by downstream water chemistry.
- A cumbersome or complex process to implement work or provide liability relief.

Future Challenges

- Significantly improving AML impacted watershed without addressing mine related point sources.
- Inherent uncertainty and risk associated with AML cleanups.
- Potential cost of AML cleanups.

Project Selection Considerations for DRMS

How we rank projects internally:

1. Adequate Characterization
2. Appropriate Remedy Selection
3. Expectations/Achievability
4. Risk
5. Partnerships
6. Operations and Maintenance

Adequate Characterization

- Watershed scale —————> Site scale
- Adequate, not excessive
 - Cost vs Benefit
- Define the problem
- Prioritize sources
- Background?

Appropriate Remedy

- Proven BMP
- Pragmatic
- Cost effective
- Low O&M
- Address the identified problem
- Effectiveness of addressing the problem

Expectations/Achievability

- Set reasonable expectations based on:
 - Characterization results
 - Remedy selection
- Establish appropriate metrics
- Funding drives expectation
 - Biggest bang for the buck

Risk

- Authority for implementation (CERCLA?).
- Non-point Source vs Point Source Discharge.
- Uncontrolled release potential.
- Downstream users.
- Likelihood of success.

Partnerships

- Cooperative landowners
- Leverage funding
- Involve local stakeholders
- Utilize various expertise
- Diversify project ownership

Operations and Maintenance

- Avoid O&M through appropriate remedy selection
- Who's responsible?
- Operations requirements?
- Maintenance needs?
 - \$\$\$
- Long term monitoring?

Contact:

Diana Bellamy SEE, EPA Region 8
Administrative Assistant,
Brownfields
(O) 303 312-6244; 8:00 a.m. – 5:00 p.m.

INFORMATION FOR VISITORS TO REGION 8 BUILDING:

EPA Region 8 is located downtown Denver about block-and-a-half walk from Union Station (A-train stop from the airport), or 3 blocks from the C, E, and W light rail platform (the Free Mall bus can be taken 2 stops to our building.) Public parking is available at 1500 and 1600 blocks of Wynkoop, and 1800 block of 16th street. (See additional information below). You can also determine available public parking through <https://parking.com/denver>.

Our building is at 1595 Wynkoop, on the corner of Wynkoop and 16th Streets. Visitors come in the revolving door, between "Office Depot" and "My Favorite Muffin" stores. A government issued ID is required. Some people carry mace and some people carry pocket knives. These items will not pass security. Allow about 25 extra minutes for security.

Security is now on the 2nd floor, off the elevators around by the atrium open side. EPA visitors will need to go to the security screening area (formerly the Aspen/Bighorn room on 2nd floor), show a valid ID, and obtain a visitor's badge prior to going to their meeting(s). They will still need to be escorted by a Region 8 staff member beyond the 2nd floor. The Conference Center Receptionist or guards will notify EPA staff that their guests are ready for escort.

Please review the following: Added Information from Tim Just, Security

From: Just, Timothy

Sent: Wednesday, March 27, 2019 11:16 AM

To: Bellamy, Diana <bellamy.diana@epa.gov>; Doris, Grace <doris.grace@epa.gov>

Subject: RE: Resending List for Legible Reading

Diana,

*Your EPA guests will be exempted from Security Screening. In order for them to be exempt they will be required to have and properly display (between shoulder and waist with photo visible) their EPA issued EPASS ID at all times while in the facility. **They will be required to check in with the Guards and give them their name each time they enter the facility. They will also be required to sign in at the main receptionist station for accountability purposes at the beginning of each day they are in the office.** If they need to go beyond the 2nd floor they will be required to have a Region 8 employee escort at all times. Please pass this information on to your guests so they are aware of the procedures.*

Thanks - Tim

TIMOTHY P. JUST

Physical Security Specialist

U.S. EPA Region 8

1595 Wynkoop Street (8TMS-INF)

Denver, CO 80202

303-312-6142

just.timothy@epa.gov

Good Samaritan Workshop- EPA Abandoned Mine Land Cleanup Roundtable –
April 17th – April 18th:

- 1.) Bring Driver's License accompanied with EPA Region badges.
- 2.) Upon entering the building and elevators proceed to the 2nd floor security.
- 3.) Even though some visitors are EPA HQ employees please be prepared to walk through security metal detectors if asked.
- 4.) Expediting Security Check, note the following:
 - a.) Carry as light or as little as possible entering the building.
 - b.) Check at front entrance of 2nd floor security to verify name is on the list prior exiting security.
 - c.) Pre-prepped process would have the following removed from personhood prior entering the detector; shoes, keys, watches, laptops, cell phones, finger-nail clippers, mace, and pocket knives; (*same as going through security at the Denver International Airport).
 - d.) If you carry your laptop, thumb drive, separate these items to go through security with ease.
 - e.) Patrons proceed to walk through security detector. (*It is *confirmed* that EPA employees will not walk through detector; however, names will require verification). Be prepared to have **both** State Driver's license and EPA badges, if you are not EPA then bring your state driver's license.
 - f.) If detector goes off: security officers will proceed to use what is called a "wand," pat down.
 - g.) Afterwards proceed to meet Sandra Briggs who will allow you to sign in prior exiting the security room.
 - h.) At this time, you will be given a lanyard as a guest. Lanyards are required by all guests.
 - i.) Prior leaving the building, Lanyards must be returned by the end of the day to 2nd floor security.
 - j.) You must go through security every time you enter the building; if you leave for break and lunch, you will require to enter through security prior returning to your conference meeting. You will not be able to by-pass this protocol.

Additional *suggestive* Public Parking Nearby Locations Availability
(*please confirm at parking.com for accuracy*):

- A.) SP+ has several parking garage locations; 1653 14th Street, (303) 607-9093
- B.) Wewatta Lot, 1480 Wewatta Street, (2 min walk), a surface lot
- C.) JP Plaza Lot, 1601 Blake Street; (2 min walk), a surface lot
- D.) Acme Lot, 1653 14th Street, (3 min walk), a surface lot
- E.) 1600 Market Square; (3 min walk)
- F.) Firehouse Lot, 1322 Blake Street; (4 min walk), a surface lot

Expedient Advice:

My name is Diana Bellamy, contact: (303) 312-6244; and I will be on the first-floor entrance briefly to answer any questions or concerns during your conference; however, because you want to attend your workshop on time try to remain close to the building if you choose to leave the premise for breaks and lunch. I will keep you posted of any concerns and or changes.

First Day, April 17th, 2019:

Note: I spoke with the security person at the front door entrance; proceed to the 2nd floor level. He is aware that you are coming. You are not required to be checked by him. Proceed to the stairs or elevators to the second floor.

Morning - If you do not see me at the front door entrance, do not wait for me to accompany you to the 2nd floor security. It will take about at least 10-minutes per person through security and time is critical. I will be on the 2nd floor security or in the Bison/Bitterroot conference rooms assisting with name tags and technology equipment. When you enter the Bison/Bitterroot conference rooms, please stop at the desk and I will accompany you with your name tags. And, answer questions.

A.) Onsite Workshop Activities-Comforts:

- 1.) Water/Coffee Carafate – coffee will be available; you can bring your own coffee mug.
 - a.) Some disposal cups will be available if needed.
 - b.) Water will be available/not bottled water.
- 2.) In most years, Denver averages a daily maximum temperature for April that's between 56- and 66-degrees **Fahrenheit** (13 to 19 degrees Celsius). The minimum temperature usually falls between 31 and 37 °F (0 to 3 °C). The days in Denver attributes a continued warming trend during April months.
 - a.) Please check forecast prior arriving in Denver because we have seen unusual cold winter; however, warming trend to be in April.
- 3.) There are vending machines on the 2nd floor for snacks and drinks.
- 4.) Bathroom accommodations are present on the 2nd floor.
- 5.) Restaurants are nearby for variety of eatery.
- 6.) Recall that you must return your Lanyard to the 2nd floor security at the end of **each** day; when returning to the conference the second day, return to security check in, sign in, receive your lanyard, etc.

April 17th, April 18th:

Again, at the end of each day return your lanyard(s). Followed by, have a safe returned home trip.

EPA's Abandoned Mine Lands Good Samaritan Demonstration Projects Roundtable

DRAFT AGENDA

April 17, 2019

Denver, CO

Purpose: Obtain individual input from key stakeholders both on lessons learned from completed projects and on the barriers/concerns hindering new Good Sam project advancement; use input to identify potential modifications to existing EPA tools and processes to facilitate agreements on potential Good Sam AML source control (dirt) demonstration projects within the year. Also, initiate dialogue on water-related project barriers and potential solutions.

- | | |
|-------------------------|---|
| 8:15 -8:30 am | Welcome and Opening Remarks (Region 8 Administrator/Steven Cook, EPA) |
| 8:15 - 8:30 am | Introductions of Meeting Attendees (All Attendees) |
| 8:30 - 8:40 am | <p>Purpose and Goals of Meeting (Roundtable Facilitator)</p> <p><i>Objective:</i> Review and discuss the reasons for the meeting and ground rules. Identify the factors that have resulted in effective and successful cleanup at abandoned mines as well as the factors that have presented challenges or hindrances to embarking on new projects at sites that do not involve direct water treatment.</p> |
| 8:40 - 9:15 am | <p>Review of State Efforts</p> <p><i>Objective:</i> Summarize the materials provided to attendees in advance of meeting, specifically the lessons learned, and challenges presented from:</p> <ul style="list-style-type: none">• Good Sam Cleanups - Recommendations from SMCRA Title IV State AML Programs – Ryan Ellis, Interstate Mining Compact Commission• Colorado Project Example(s) – Jeff Graves, Colorado DRMS• State Cleanup Programs – Cyndy Mackey, EPA |
| 9:15 - 9:45 am | <p>Review of Federal Efforts</p> <p><i>Objective:</i> Summarize advance meeting materials, specifically the lessons learned and challenges presented from:</p> <ul style="list-style-type: none">• EPA Project Example(s) – Mark Chalfant - EPA and Maya MacHamer, Fourmile Watershed Coalition Coordinator |
| 9:45 - 10:00 am | Break |
| 10:00 - 12:00 pm | <p>Source Control Projects Barriers and Potential Solutions (All Attendees)</p> <p><i>Objective:</i> Obtain individual input/advice on what factors have led to past success, and current barriers and potential solutions for starting and completing new source control Good Sam projects. Discussion topics can also be grouped into the following general areas; what has been:</p> <ul style="list-style-type: none">• Helpful resulting in successfully completing projects?• Barriers/hurdles, such as:<ul style="list-style-type: none">○ Legal/Process○ Funding○ Site Access and Characterization○ Other |

EPA's Abandoned Mine Lands Good Samaritan Demonstration Projects Roundtable

DRAFT AGENDA

April 17, 2019

Denver, CO

12:00 - 1:15 pm	Lunch
1:15 - 3:15 pm	Source Control Projects Barriers and Potential Solutions (cont.) (All Attendees)
3:15 - 3:30 pm	Break
3:30 - 4:30 pm	Water-Related Project Barriers and Potential Solutions (All Attendees) <i>Objective:</i> Obtain individual input/advice on barriers and potential solutions for starting and completing water-related Good Sam projects.
4:30–5:00pm	Summary and Next Steps (Roundtable Facilitator)

EPA's Abandoned Mine Lands Good Samaritan Demonstration Projects Roundtable
DRAFT AGENDA
April 17, 2019
Denver, CO

More detail of the structured topic areas:

- EPA Legal/Agreements: Generally, how could these be addressed/improved?
 - AOCs and Comfort letters
 - Paperwork and Process
 - Short and Long-term Liability Concerns
- State/Federal Land Management Agency (FLMA) Lead/Support: What can EPA do to facilitate/advance Good Sam projects led by state and FLMA's?
 - State VCPs/Other
 - Cleanups under FLMA's Authorities
 - Mixed Ownership sites
- Baseline/Data Requirements: Generally, do issues around site conditions create hindrances?
 - Data Availability
 - Investigations - Is too much of the onus placed on volunteers
 - Subcontractors Qualifications
 - Baseline/Existing Contamination
 - Site Access
- Monitoring and Reporting Requirements: Are there concerns with monitoring requirements and how to report and communicate results/success
 - Monitoring requirements
 - Reporting requirements
 - Costs
 - Liability
 - Communicating Project Effectiveness/Success Metrics
- Financial:
 - Financial Assurance Flexibilities for Source Control Projects
 - Federal or other Funding Sources

Advancing Good Samaritan Cleanups
Recommendations from SMCRA Title IV State AML Programs
EPA AML Good Samaritan Meeting, April 2019

Source Control Projects vs. Water Projects

- State AML programs operating under Title IV of the Surface Mining Control and Reclamation Act (SMCRA) in the eastern coal region do not have significant concern with liability for source control projects
 - These types of projects are considered typical reclamation work, e.g. reclaiming a coal refuse pile and isolating remains from exposure
- Generally there is understanding that these projects are conducted entirely under the auspices of the SMCRA Title IV AML Program
 - The Program was established specifically for pre-1977 coal AML sites and has its own well-developed rules and procedures, which work well
- However, Clean Water Act (CWA) liability is a special case due to the ambiguous relationship between the CWA and SMCRA.
 - There is significant concern with liability under CWA where AML projects directly affect water resources
- The state Title IV AML programs have recommendations for what would be necessary to facilitate their ability to conduct water projects

Clear, Achievable Expectations for Projects to Improve Water

- Recognize that AML sites are a distinct class of projects from modern mines
 - For AML, there are no PRPs, and therefore no clean up effort without government or third-party involvement
 - The typical approach to enforcing water quality under CWA doesn't work well for AML; NPDES permits are generally untenable
- Focus should be on making improvements, not achieving perfection
 - Partial improvements at individual sites are helpful and should be encouraged rather than punished with liability
 - Base project goals on what is achievable at the site, taking into account:
 - Environmental Circumstances; and
 - Funding and implementation capability
- Take a watershed-wide view when strategizing projects
 - Make incremental progress toward aggregate gains in whole watersheds
 - The aggregate effect of many small-scale projects is great
 - Focus on practical goals like restoring biological and recreational functions, rather than strictly on water quality
 - Maximize overall watershed improvement - consider funding trade offs with other projects and avoid diminishing returns by gauging economical level of improvement at each site
 - Encourage simple systems like lime dosers where they free resources for other sites and lead to more economical, effective overall approach

- Ensure expectations of project participants are reasonable given finite resources, e.g. for pre-project approvals and long-term operation and maintenance
 - Responsibility borne by project participants must be reasonably circumscribed so that requirements are clear and achievable
 - Scale the intensity and scope of requirements to what is necessary and tenable for project participants, avoiding complexity where possible
 - Indefinite responsibilities are untenable - there must be an end date

Working within Existing Frameworks

- Build on the existing governmental frameworks for AML work
 - State and federal agencies already exist with long-standing expertise
 - Procedures are already in place for how to safely conduct projects, establish eligibility for AML and verify non-existence of PRPs, provide public consultation, and monitor and care for sites post-completion
- Rely on existing state-level programs to administer projects where possible
 - State-level programs have specific expertise in their regions – they have special knowledge of:
 - Their local environment and regional best practices
 - The specific AML sites in their areas of jurisdiction; and
 - The potentially relevant watershed groups and landowners, with whom there are often existing relationships
- Make enfranchising the state AML programs a policy priority
 - The focus of policy debate is often on obstacles to assistance from third-parties, but state AML programs also face obstacles
 - Enabling state AML programs' water improvement efforts will in turn help attract and encourage participation of third-party groups
- Encourage cooperation between government agencies and third parties
 - Bringing agency expertise into the situation early helps ensure proper procedure and quality of projects
 - Third-party groups benefit from assistance in navigating authorizations and collecting necessary information etc.
 - Include landowners in the discussion– their participation is key, and they often need assistance and protection too
- Allow agencies and third-parties to apportion responsibilities between them
 - Take advantage of respective capabilities, leverage comparative strengths
 - e.g. allocation of funding and personnel resources; handling project design or operation and maintenance
- Encourage growth of local level NGO groups
 - Helps channel community resources toward local projects
 - Developing more opportunities for assistance to government agencies
 - Example of growing greener program in Pennsylvania

Appointment

From: L. Michael Bogert [mbogert@midasgoldinc.com]
Sent: 5/23/2019 3:07:18 PM
To: L. Michael Bogert [mbogert@midasgoldinc.com]; Werntz, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=479307949d9f4864a47eba97f835b7fa-Werntz, Jim]
CC: Laurel Sayer [lsayer@midasgoldinc.com]; Hood, Lynne [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1ee94d8634ad482d957dff4d3d76f5ef-McWhorter, Lynne]
Subject: Brief Visit Next Week
Location: EPA Idaho Ops Office
Start: 5/23/2019 8:00:00 PM
End: 5/23/2019 8:30:00 PM
Show Time As: Tentative

Recurrence: (none)

From: L. Michael Bogert
Sent: Thursday, May 23, 2019 9:06 AM
To: 'Werntz, James' <Werntz.James@epa.gov>
Cc: Laurel Sayer <lsayer@midasgoldinc.com>; Hood, Lynne <Hood.Lynne@epa.gov>
Subject: RE: Brief Visit Next Week

Thanks Jim.

From: Werntz, James <Werntz.James@epa.gov>
Sent: Thursday, May 23, 2019 9:04 AM
To: L. Michael Bogert <mbogert@midasgoldinc.com>
Cc: Laurel Sayer <lsayer@midasgoldinc.com>; Hood, Lynne <Hood.Lynne@epa.gov>
Subject: RE: Brief Visit Next Week

Yes Michael – it works. I'll be coming from a meeting at the Riverside, so I won't be back until right at 2 pm. Jim

James H. Werntz, Director
US EPA – Idaho Operations
950 W. Bannock St., Suite 900
Boise, Idaho 83702

208-378-5743

From: L. Michael Bogert <mbogert@midasgoldinc.com>
Sent: Thursday, May 23, 2019 9:02 AM
To: Werntz, James <Werntz.James@epa.gov>
Cc: Laurel Sayer <lsayer@midasgoldinc.com>; Hood, Lynne <Hood.Lynne@epa.gov>
Subject: RE: Brief Visit Next Week

Jim: Confirming our 2P today? If that works I will send a meeting notice.

Thanks Jim and we hope to see you this aft.

From: L. Michael Bogert
Sent: Tuesday, May 14, 2019 6:13 PM
To: Laurel Sayer <lsayer@midasgoldinc.com>; Werntz, James <Werntz.James@epa.gov>
Cc: Hood, Lynne <Hood.Lynne@epa.gov>
Subject: RE: Brief Visit Next Week

Laurel/Jim: That will work for me.

From: Laurel Sayer <lsayer@midasgoldinc.com>
Sent: Tuesday, May 14, 2019 4:45 PM
To: Werntz, James <Werntz.James@epa.gov>; L. Michael Bogert <mbogert@midasgoldinc.com>
Cc: Hood, Lynne <Hood.Lynne@epa.gov>
Subject: RE: Brief Visit Next Week

I can meet next Thursday afternoon. 2 PM?
Michael does that work for you?

From: Werntz, James <Werntz.James@epa.gov>
Sent: Tuesday, May 14, 2019 4:43 PM
To: L. Michael Bogert <mbogert@midasgoldinc.com>
Cc: Laurel Sayer <lsayer@midasgoldinc.com>; Hood, Lynne <Hood.Lynne@epa.gov>
Subject: Re: Brief Visit Next Week

Michael and Laurel: If your schedule allows, could we meet next Thursday afternoon, May 23? Jim

Sent from my iPhone

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Jim: Laurel and I are hoping to visit with you and Lynn Hood next Monday or Tuesday regarding two brief administrative matters related to the Stibnite Project. All we need is a half hour.

Thanks.

L. Michael Bogert
General Counsel
Midas Gold Idaho

JOIN US TODAY. WWW.SUPPORTSTIBNITE.COM



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<image003.png> @MidasIdaho
W www.midasgoldidaho.com

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Appointment

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General Counsel
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Message

From: McKenna, Elizabeth [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=859179A8CB0547BC974DC0241E973D37-MCKENNA, ELIZABETH]
Sent: 3/5/2019 5:40:12 PM
To: Bradley M. Marten [bmarten@martenlaw.com]
CC: Werntz, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=479307949d9f4864a47eba97f835b7fa-Werntz, Jim]; Hood, Lynne [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1ee94d8634ad482d957dff4d3d76f5ef-McWhorter, Lynne]
Subject: RE: Stibnite Gold Project

2:00 still works for me. I'm happy to walk down the hill to your office. I am assuming the meeting does not include technical folks, is that correct? See you tomorrow.

- Elizabeth

Elizabeth McKenna
Assistant Regional Counsel
U.S. EPA
1200 Sixth Avenue
Seattle, WA 98101
(206) 553-0016
Cell: (206) 402-9963

From: Bradley M. Marten <bmarten@martenlaw.com>
Sent: Tuesday, March 05, 2019 8:34 AM
To: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Cc: Werntz, James <Werntz.James@epa.gov>; Hood, Lynne <Hood.Lynne@epa.gov>
Subject: RE: Stibnite Gold Project

Elizabeth:

Thanks for your quick response and willingness to meet. Would 2 pm tomorrow (Wednesday) still work? If so, would you prefer meeting at EPA or walking downtown to our office? We are 4 blocks straight down the hill at Second and Seneca (1191 Second Ave).

Bradley M. Marten
Partner

D - 206 . 292 . 2604
T - 206 . 292 . 2600
E - bmarten@martenlaw.com
martenlaw.com
1191 Second Ave, Suite 2200
Seattle, WA 98101



From: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Sent: Friday, March 1, 2019 10:17 AM
To: Bradley M. Marten <bmarten@martenlaw.com>

Cc: Werntz, James <Werntz.James@epa.gov>; Hood, Lynne <Hood.Lynne@epa.gov>

Subject: RE: Stibnite Gold Project

Hello, Brad. It has been a very long time since we've worked together! I'd be happy to share my thoughts on the project with you. The most immediate issue currently is the transfer of certain information that EPA has requested from Midas. As you know, I've been talking with Michael Bogart about Site for the past several months. I left a message with Michael last week regarding transfer of information and I'd be happy to talk to you about that as well as broader issues. Can you talk or meet next week? I'd be interested to know more about the roles of each of the three firms retained by Midas so that I know who I should communicate with on different issues. I'll propose a few open times that I have on my calendar next week, but feel free to suggest others that might work better for you.

Tuesday, March 4th between 12:00 and 3:00

Wednesday, March 5th between 1:00 and 4:00

Thursday, March 6th between 10:00 and 1:00

- Elizabeth

Elizabeth McKenna
Assistant Regional Counsel
U.S. EPA
1200 Sixth Avenue
Seattle, WA 98101
(206) 553-0016
Cell: (206) 402-9963

From: Bradley M. Marten <bmarten@martenlaw.com>

Sent: Thursday, February 28, 2019 5:31 PM

To: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>

Cc: Werntz, James <Werntz.James@epa.gov>; Hood, Lynne <Hood.Lynne@epa.gov>

Subject: Stibnite Gold Project

Elizabeth:

Attached is a letter discussing recent water quality sampling results at the Stibnite Gold Project in Idaho. A copy has also been placed in the mail. Our firm has been retained along with two others to work with Midas Gold Idaho, Inc. and Midas Gold Corp. on the project.

It has been some time since we have worked together and I am looking forward to working with you again. I would like to answer any questions you may have about the project and to learn more about your perspective. Please let me know if you have the time for a call or coffee to catch up. Thanks -- Brad

Bradley M. Marten

Partner

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Message

From: L. Michael Bogert [mbogert@midasgoldinc.com]
Sent: 5/23/2019 3:04:58 PM
To: Werntz, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=479307949d9f4864a47eba97f835b7fa-Werntz, Jim]
CC: Laurel Sayer [lsayer@midasgoldinc.com]; Hood, Lynne [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1ee94d8634ad482d957dff4d3d76f5ef-McWhorter, Lynne]
Subject: RE: Brief Visit Next Week

Thanks Jim.

From: Werntz, James <Werntz.James@epa.gov>
Sent: Thursday, May 23, 2019 9:04 AM
To: L. Michael Bogert <mbogert@midasgoldinc.com>
Cc: Laurel Sayer <lsayer@midasgoldinc.com>; Hood, Lynne <Hood.Lynne@epa.gov>
Subject: RE: Brief Visit Next Week

Yes Michael – it works. I'll be coming from a meeting at the Riverside, so I won't be back until right at 2 pm. Jim

James H. Werntz, Director
US EPA – Idaho Operations
950 W. Bannock St., Suite 900
Boise, Idaho 83702

208-378-5743

From: L. Michael Bogert <mbogert@midasgoldinc.com>
Sent: Thursday, May 23, 2019 9:02 AM
To: Werntz, James <Werntz.James@epa.gov>
Cc: Laurel Sayer <lsayer@midasgoldinc.com>; Hood, Lynne <Hood.Lynne@epa.gov>
Subject: RE: Brief Visit Next Week

Jim: Confirming our 2P today? If that works I will send a meeting notice.

Thanks Jim and we hope to see you this aft.

From: L. Michael Bogert
Sent: Tuesday, May 14, 2019 6:13 PM
To: Laurel Sayer <lsayer@midasgoldinc.com>; Werntz, James <Werntz.James@epa.gov>
Cc: Hood, Lynne <Hood.Lynne@epa.gov>
Subject: RE: Brief Visit Next Week

Laurel/Jim: That will work for me.

From: Laurel Sayer <lsayer@midasgoldinc.com>
Sent: Tuesday, May 14, 2019 4:45 PM
To: Werntz, James <Werntz.James@epa.gov>; L. Michael Bogert <mbogert@midasgoldinc.com>
Cc: Hood, Lynne <Hood.Lynne@epa.gov>
Subject: RE: Brief Visit Next Week

I can meet next Thursday afternoon. 2 PM?

Michael does that work for you?

From: Werntz, James <Werntz.James@epa.gov>
Sent: Tuesday, May 14, 2019 4:43 PM
To: L. Michael Bogert <mbogert@midasgoldinc.com>
Cc: Laurel Sayer <lsayer@midasgoldinc.com>; Hood, Lynne <Hood.Lynne@epa.gov>
Subject: Re: Brief Visit Next Week

Michael and Laurel: If your schedule allows, could we meet next Thursday afternoon, May 23? Jim

Sent from my iPhone

On May 14, 2019, at 9:47 AM, L. Michael Bogert <mbogert@midasgoldinc.com> wrote:

Jim: Laurel and I are hoping to visit with you and Lynn Hood next Monday or Tuesday regarding two brief administrative matters related to the Stibnite Project. All we need is a half hour.

Thanks.

L. Michael Bogert
General Counsel
Midas Gold Idaho

JOIN US TODAY. WWW.SUPPORTSTIBNITE.COM



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Message

From: Bradley M. Marten [bmarten@martenlaw.com]
Sent: 3/1/2019 1:30:43 AM
To: McKenna, Elizabeth [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=859179a8cb0547bc974dc0241e973d37-McKenna, Elizabeth]
CC: Werntz, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=479307949d9f4864a47eba97f835b7fa-Werntz, Jim]; Hood, Lynne [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1ee94d8634ad482d957dff4d3d76f5ef-McWhorter, Lynne]
Subject: Stibnite Gold Project
Attachments: 2019-02-28 EPA CERCLA Letter (00557678xA9955).pdf

Elizabeth:

Attached is a letter discussing recent water quality sampling results at the Stibnite Gold Project in Idaho. A copy has also been placed in the mail. Our firm has been retained along with two others to work with Midas Gold Idaho, Inc. and Midas Gold Corp. on the project.

It has been some time since we have worked together and I am looking forward to working with you again. I would like to answer any questions you may have about the project and to learn more about your perspective. Please let me know if you have the time for a call or coffee to catch up. Thanks -- Brad

Bradley M. Marten

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